IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27/9/2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.14743 OF 1997
AND
W.P.14744 OF 1997
AND
W.M.P.No.23626 OF 1997.

B.Lakshmi .. Petitioner in both W.Ps.

-Vs-

1. Tamil Nadu Electricity Board,
represented by its
Chief Engineer (Personnel),
800 Anna Salai,
Chennai-600 002.

2. Internal Audit Officer,
Board Office,
Audit Branch,
Tamil Nadu Electricity Board,
800 Anna Salai,
Chennai-600 002. .. Respondents in both W.Ps.

Writ Petitions filed under Article 226 of the Constitution of India praying for the reliefs as stated therein.

For petitioner : Mr.S.Elamurugan

For respondents : Mr.V.Surendar

:COMMON ORDER

W.P.No.14743 of 1997 has been filed praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the first respondent made in Letter No.098140/545/C5(3)/96-4 dated 11.3.1997 and to quash the same further directing the respondents to pass orders granting interest on the pension at the rate of 12% from the date when each month's pension became payable within the time stipulated by this Court.

2. W.P.No.14744 of 1997 has been filed praying to issue a Writ of

Certiorari to call for he records relating to the proceedings of the second respondent made in Lr.No.32643-1/BOAD/P.111/U.111/PPO 21005, dated 27.8.1997 and quash the same.

3. In the similar affidavits filed in support of both the above writ petitions, the petitioner would submit that her husband Bangaru Babu was an employee of the Tamil Nadu Electricity Board and while he was working as Junior Engineer, he died in harness on 11.7.1980; that even though the post held by her husband belongs to pensionable cadre under the respondent Board, the respondent denied the pension on the ground that he had not opted for the same when he was promoted to the Post of Junior Engineer. The petitioner would submit that according to her knowledge, an option to pensionable cadre could be exercised within a period of five years from the date when an employee is promoted to the pensionable cadre; that the interpretation of the Rules would make it clear that if an employee is promoted to the pensionable cadre, he is automatically entitled to pension, unless he opts to continue in

the non-pensionable cadre and since her husband died before the expiry of five years from the date of his promotion, any representation made by this petitioner should have been considered in her favour.

4. The petitioner would further submit that even though the respondent Board declined to grant pension, after prolonged correspondence and after a period of 15 years, they have passed orders in the proceedings dated 28.8.1995 recommending her case for pension and accordingly orders were passed on 11.1.1996 sanctioning family pension w.e.f. 12 .7.1980 and the authorisation letter was issued on 1.9.1996 wherein the second respondent calculated the family pension and D.C.R.G. from 12.l7.1980 to 31.7.1996 at Rs.1,41,547.70 without interest and from that amount, a sum of Rs.75,366.40 was adjusted which represents gratuity of Rs.10,504/-, G.P.F. with interest at Rs.52,804/- and special contribution of Rs.12,058.40; that in the letter dated 28.8.1995, only the amounts under these three heads were described as the amounts paid to non-pensioner from 9.9.1996 onwards and that she is receiving the pension every month which approximately cover to Rs.1,400/=.

5. The petitioner would further submit that the respondent Board while making deduction, calculated the amount recoverable by them with interest whereas while disbursing the amount to her, the Board arbitrarily and unilaterally did not award interest and therefore she made a representation to the first respondent, who rejected the same in his letter dated 11.3.1997 (challenging which she filed W.P.No.14743/199 7).

6. The petitioner would further submit that while the matter stood like this, the second respondent issued a letter dated 29.8.1997 stating that a sum of Rs.19,033.25 was not adjusted in the terminal benefits authorised and the same should be paid immediately within ten days failing which the payment of family pension would be stopped challenging which the petitioner filed the W.P.No.14744/1997.

7. The respondents would file a counter thereby submitting that the husband of the petitioner by name Bangarubabu was regularly appointed in

R.W.E. cadre i.e. in a non-pensionable cadre w.e.f. 17.2.1956 and he was regularly promoted to the provincial cadre as Junior Engineer II Grade i.e. in a pensionable cadre on 2.4.1979 F.N. and before exercising his option for pension scheme, he expired on 11.7.1980 i.e. during the period of probation in the promoted post and therefore, the terminal benefits at the time of his death were also settled under Contributory Provident Fund Scheme.

8. The respondents would further submit that the Tamil Nadu Electricity Board was formed on 1.7.1957 and the employees who were working in the Electricity Department in Tamil Nadu Government were taken over as employees of the Board and continued with the same service conditions under the Board as two categories of employees i.e. (1) employees coming under Pensionable scheme (General Provident Fund) and (2) employees coming under non-pensionable scheme (Contributory Provident Fund); that the opportunity of availing pensionary benefits was however given to the employees governed by the non-pensionable scheme on their permanent transfer to pensionable cadre by way of exercising option for pension scheme within six months from the date of declaration of completion of probation in the promoted post under the pensionable cadre and in the instant case, the eligibility for exercising option for pension scheme will arise only if the deceased employee completed the prescribed period of probation in the post of Junior Engineer II Grade, but since the employee expired during the period of probation itself, extending the benefits of pension scheme to the family of the deceased employee does not arise. But the Board has sympathetically considered the request of the petitioner and extended the benefits of pension scheme from 12.7.1980 onwards i.e. from the date of his death as the deceased employee was serving in the pensionable service by coming into pensionable cadre viz. Junior Engineer II Grade from 2.4.1979 itself, subject to the condition that the petitioner should refund the entire contributory provident fund retirement benefit and the petitioner is also very much aware that the pension scheme would be applicable to her only from the date of refund made by her; that inasmuch as the amounts refundable by the petitioner have been adjusted only in the arrears of pensionary benefits and virtually there is no delay in pension payment and it is mentioned that the payment has been authorised on the day of eligibility itself and hence the question of making payment of interest for the delayed settlement has not at all arisen in this case.

9. Further submitting a list showing the benefits now given to the petitioner by extending pension scheme as well as eligibility under Contributory Provident Fund Scheme, the respondents would submit that while deducting the C.Ps.F. terminal benefits from the arrears of family pension, interest has been charged only for C.P.F. contribution amount and hence the averment of the petitioner that the interest has been charged for the entire amount i.e. including the Special Contribution and Gratuity is not correct and the over payment of terminal benefits consequent on the short recovery of C.P.F. contribution amount has been subsequently noticed; that taking into account the undertaking given by the petitioner to the effect that she would be ready to make good any loss caused to the Board by way of over payment of terminal benefits etc. in one lumpsum she has been asked to remit amount in one lumpsum; that recrediting of the terminal benefits already received by the petitioner under Contributory Provident Fund Scheme is a pre-condition to

sanction pensionary benefits and hence without remitting the entire amount, the question of extending the pensionary benefits does not arise in this case. On such averments, the respondent would pray to dismiss both the above writ petitions.

10. During arguments, both the learned could would reiterate the facts as extracted supra, without citing any law and hence extracting the same would only be a time consuming affair.

11. On a careful perusal of the entire materials placed on record would they reveal that the petitioner's husband was appointed in a non-pensionable cadre on 17.2.1956 and even though he was promoted to the pensionable cadre of Junior Engineer II Grade on 2.4.1979, he died on 11.7.1980 before exercising his option whether to continue in the same old Contributory Provident Fund Scheme or in the pension scheme. But, however, taking into consideration of the request of the petitioner, the respondent Board has sympathetically granted the pension as a special case subject to the condition that she should refund the entire contributory provident fund retirement benefit. Even the petitioner has undertaken while receiving the pension that she would make good any loss caused to the Board by way of over payment of terminal benefits in one lumpsum. Accordingly, the amounts have been adjusted only from the arrears of pensionary benefits and she was granted pension from 12.7.1980 i.e. from the next date of death of her husband. But, thereafter it was noticed by the respondents that there was short recovery of C.P.F. contribution from the petitioner and hence they have issued the impugned notice dated 27.8.1997 to the petitioner seeking her to repay the said amount.

12. It is to be mentioned here that the petitioner would become entitled to the pension only if she remits the amounts received by her under the C.P.F. Scheme and she has also undertaken to make good any loss occasioned to the Board in paying such terminal benefits to her. Therefore, since the respondents have noticed excess payment of terminal benefits to her, they have issued the impugned order seeking her to make good the loss caused to the Board, which cannot, in any manner be termed either arbitrary or illegal.

13. But, however, in the case in hand, the authorisation letter for making payment of pensionary benefits was issued on 1.9.1996 and the impugned notice is dated 27.8.1997. It is the mistake committed on the part of the respondents in calculating the amounts to be recovered from the petitioner while paying her pension and hence, while they are entitled to recover the excess payment from the petitioner, it is arbitrary on their part to charge interest on such payments due from the petitioner. Therefore, while upholding the impugned order dated 27.8.1997 only insofar as effecting recovery of the excess payment made to the petitioner, it is made clear that the interest charged for the said excess payment to the petitioner so as to arrive at an amount of Rs.19,033.25 is arbitrary and hence the respondents are directed to delete the interest charged on the C.P.F. contribution amount since in such matters, it is undesirable to levy interest and this writ petition is entitled to be allowed only to this extent and for all other purposes, it becomes

liable to be dismissed.

14. So far as the claim of the petitioner in W.P.No.14743 of 1997 thereby claiming interest on the pension at the rate of 12% p.a. from the date when each month's pension became payable is concerned, it is to be mentioned that the sanction of pension, which was purely on sympathetic grounds, arose only on the date of issue of authorisation for making pensionary benefits and in the case in hand the said authorisation has been issued on 1.9.1996 and the petitioner has been paid the entire pension calculating the same from the next date of her husband's death i.e. from 12.7.1980. Therefore, the question of seeking any interest, as claimed on the part of the petitioner for the socalled delayed payment of pension, does not arise at all and the first respondent has given valid reasons for denying the said interest to the petitioner in the impugned order. Hence, this writ petition becomes liable only to be dismissed.

In result,
(i) W.P.No.14743 of 1997 is dismissed.
(ii) W.P.No.14744 of 1997 is allowed in part. The impugned order of the second respondent in Lr.No.32643-1/BOAD/P.111/U.111/PPO 21005, dated 27.8.1997 is quashed insofar as charging interest for the excess payment made to the petitioner so as to arrive at a sum of Rs.19,033-2 5 is concerned. For all other purposes, this writ petition shall stand dismissed and the impugned order stands confirmed.
Consequently, W.M.P.No.23626 of 1997 is closed.
However, in the circumstances of the cases, there shall be no order as to costs.

Index: Yes

Internet: Yes
Rao

To

1. The Chief Engineer (Personnel),
Tamil Nadu Electricity Board,
800 Anna Salai,
Chennai-600 002.

2. Internal Audit Officer,
Board Office,
Audit Branch,
Tamil Nadu Electricity Board,
800 Anna Salai,
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